

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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THEODORA RANDOLPH,

Plaintiff(s),

v.

ALBERTSONS LLC D/B/A ALBERTSONS  
#1059,

Defendant(s).

Case No. 2:20-CV-1896 JCM (NJK)

ORDER

Presently before the court is plaintiff Theodora Randolph's ("Randolph") motion to remand. (ECF No. 10). Defendant Albertsons LLC ("Albertsons") filed a response in opposition (ECF No. 12) to which Randolph replied (ECF No. 13).

**I. Background**

Randolph alleges that she was visiting the Albertsons at 5500 Boulder Highway in Las Vegas when she was struck from both sides by the automatic sliding glass doors while exiting the store. (Compl., ECF No. 1-2 at ¶ 11). Randolph suffered injuries to her neck, back, ankle, and upper arm and has post-traumatic headaches. (Pl.'s Req. for Exemption from Arbitration, ECF No. 1-2 at 35). As of October 1, 2020, Randolph has incurred \$32,811.24 in medical bills. (*Id.* at 38).

Randolph sued Albertsons in Nevada state court, alleging a simple negligence claim. (ECF No. 1-2). Albertsons removed the case to this court (ECF No. 1) and Randolph now asks the court to remand the case. (ECF No. 10).

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## 1      **II.      Legal Standard**

2            Federal courts are courts of limited jurisdiction. *Owen Equip. & Erection Co. v.*  
 3      *Kroger*, 437 U.S. 365, 374 (1978). Accordingly, there is a strong presumption against  
 4      removal jurisdiction. *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009).  
 5      Under the removal statute, a defendant may remove any civil action over which the federal  
 6      district court has original jurisdiction. 28 U.S.C. § 1441(a).

7            After a defendant learns that an action is removable, it has thirty days to file a notice  
 8      of removal. *Id.* §1446(b). That is, “the thirty-day clock doesn’t begin ticking until a  
 9      defendant receives ‘a copy of an amended pleading, motion, order or other paper’ from  
 10     which it can determine that the case is removable.” *Durham v. Lockheed Martin Corp.*, 445  
 11     F.3d 1247, 1250 (9th Cir. 2006) (quoting 28 U.S.C. § 1446(b)(2)).

12           A plaintiff can challenge removal with a motion to remand. 28 U.S.C. § 1447(c). On  
 13     a motion to remand, the removing defendant must show by a preponderance of the evidence  
 14     that the court has original jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.1992).  
 15     The court will resolve all ambiguities in favor of remand. *Hunter*, 582 F.3d at 1042. Thus, if  
 16     removal is based on diversity jurisdiction, the removing defendant must show by a  
 17     preponderance of the evidence that there is complete diversity and that the amount in  
 18     controversy exceeds \$75,000. 28 U.S.C. § 1332(a).

19           The removing defendant does not have to predict the eventual award with legal  
 20     certainty. *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004). But it “bears the  
 21     burden of actually proving the facts to support jurisdiction, including the jurisdictional  
 22     amount.” *Gaus*, 980 F.2d at 567.

## 23      **III.      Discussion**

24           The parties disagree over whether the amount in controversy exceeds \$75,000. “In  
 25     determining the amount in controversy, courts first look to the complaint. Generally, ‘the  
 26     sum claimed by the plaintiff controls if the claim is apparently made in good faith.’ ” *Ibarra*  
 27     *v. Manheim Invests., Inc.* 775 F.3d 1193, 1197 (9th Cir. 2015) (citing *St. Paul Mercury*  
 28     *Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)).

1 Here, Randolph does not plead a specific damages amount. (ECF No. 1-2 at 12). Her  
 2 prayer for relief is: “(1) For special and general damages, both past and future, in an amount  
 3 in excess of \$15,000; (2) Prejudgment interest; (3) Statutory penalties and/or damages; (4)  
 4 Attorneys’ fees and costs of suit; and (5) For such other and further relief as the Court may  
 5 deem just and proper.” (*Id.*). Because Nevada’s Rules of Civil Procedure allow a plaintiff to  
 6 generally plead damages “in excess of \$15,000” without further specification of the amount,  
 7 no adverse inference should be made from Randolph’s complaint. Nev. R. Civ. P. 8(a)(4);  
 8 *Soriano v. USAA Ins. Agency, Inc.*, No. 3:09-cv-00661-RCJ-RAM, 2010 WL 2609045, at \*2  
 9 (D. Nev. June 24, 2010).

10 As a result, it is not evident from the face of Randolph’s complaint that the amount in  
 11 controversy requirement is met. Thus, the “amount-in-controversy inquiry in the removal  
 12 context is not confined to the face of the complaint.” *Valdez v. Allstate Ins. Co.*, 372 F.3d  
 13 1115, 1117 (9th Cir. 2004). The parties can offer any “summary-judgement-type evidence,”  
 14 *id.*, and, as aforementioned, Albertsons must show by a preponderance of the evidence that  
 15 the amount in controversy exceeds \$75,000. *Gaus*, 980 F.2d at 567; *Sanchez v. Monumental*  
 16 *Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

17 Albertsons offers Randolph’s Request for Exemption from Arbitration which avers  
 18 that the amount in controversy exceeds \$50,000. (ECF No. 1-2 at 35). It also offers  
 19 Randolph’s January 2, 2020 pre-litigation \$164,800 settlement offer as the “only reliable  
 20 computation” of Randolph’s unspecified future medical specials and general damages. (ECF  
 21 No. 12 at 4). In other words, it has met its burden to show that “what the plaintiff hopes to  
 22 get out of the litigation” exceeds the jurisdictional amount. (*Id.* (quoting *Rising-Moore v.*  
 23 *Red Roof Inns, Inc.*, 435 F.3d 813, 816 (7th Cir. 2006)). And Randolph’s offer of judgment  
 24 for less than \$75,000 should be disregarded because it was offered *after* removal to defeat  
 25 diversity jurisdiction. (*Id.* at 5).

26 In response, Randolph states that her medical bills to date total \$32,811.24 and that “a  
 27 jury would need to give [her] double her medical bills and an additional \$9,378.52 before  
 28 this Court would have jurisdiction, an unlikely scenario.” (ECF No. 10 at 3). Randolph

1 states that she only sought exemption from arbitration because “she believed her case to have  
2 a value in excess of \$50,000” but “there is a difference between \$50,000 and \$75,000.”  
3 (ECF No. 13 at 2).

4 A settlement letter is relevant only if it “reflect[s] a reasonable estimate of the  
5 plaintiff’s claim.” *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002); *see also Burns*  
6 *v. Windsor Ins. Co.*, 31 F.3d 1092, 1097 (11th Cir. 1994) (noting that while a “settlement  
7 offer, by itself, may not be determinative, it counts for something”); *Soriano v. USAA Ins.*  
8 *Agency, Inc.*, No. 3:09-cv-00661-RCJ-RAM, 2010 WL 2609045, at \*2 (D. Nev. June 24,  
9 2010).

10 The court is not convinced that the settlement letter reflects a reasonable estimate of  
11 Randolph’s claim. *Cf. Wolf v. State Farm Mut. Auto. Ins. Co.*, No. 2:14-CV-00589-GMN,  
12 2014 WL 6882937, at \*4 (D. Nev. Dec. 4, 2014). Randolph also now disavows her  
13 “inflated” settlement offer unlike the plaintiff in *Cohn*. (ECF No. 13 at 2); *Cohn*, 281 F.3d at  
14 840 (“Cohn could have argued that the demand was inflated and not an honest assessment of  
15 damages, but he made no attempt to disavow his letter or offer contrary evidence.”). And  
16 apart from Randolph’s settlement letter, Albertsons offers no good estimate of Randolph’s  
17 damages. In fact, Randolph’s January 2, 2020 settlement letter and her October 1, 2020  
18 request for exemption from arbitration both state the same \$32,811.24 amount in accrued  
19 medical bills, which suggests that she is not accruing any more potential medical special  
20 damages. *Compare* (ECF No. 1-2 at 35), *with* (ECF No. 12-1).

21 At bottom, the evidence at this stage shows that Randolph “has a case valued between  
22 \$50,000 and \$75,000.” (ECF No. 13 at 4). Because Albertsons has not established by a  
23 preponderance of the evidence that the amount in controversy exceeds \$ 75,000, this case is  
24 remanded back to state court.

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1 **IV. Conclusion**

2 Accordingly,

3 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Randolph's motion  
4 to remand (ECF No. 10) be, and the same hereby is, GRANTED.

5 DATED December 2, 2020.

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8 UNITED STATES DISTRICT JUDGE  
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